

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
November 16, 1999**

CASE NO: EC-99-553

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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

Uncertified Copy:

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

GST Steel Company,)	
)	
Complainant,)	
)	
v.)	<u>Case No. EC-99-553</u>
)	
Kansas City Power & Light Company,)	
)	
Respondent.)	

ORDER REGARDING KANSAS CITY POWER & LIGHT
COMPANY'S MOTION TO LIMIT THE SCOPE OF DISCOVERY
AND ISSUES

On May 11, 1999, GST Steel Company (GST) filed a complaint with the Missouri Public Service Commission against Kansas City Power & Light Company (KCPL). In its Complaint, GST contends that imprudent management by KCPL, manifested particularly in the form of poor maintenance practices, has caused significantly higher electricity prices for GST in that repeated outages of KCPL generation facilities has led KCPL to purchase necessary power from other suppliers. GST also complains that KCPL's alleged poor maintenance practices have resulted in a loss of reliability in the power furnished to GST. GST asserts that its production processes have been repeatedly disrupted by power failures of one sort or another.

On October 18, 1999, KCPL moved this Commission to limit the scope of the issues and discovery in this proceeding. On October 28,

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1999, GST filed its response in opposition to KCPL's motion. Also on October 28, 1999, the Staff of the Missouri Public Service Commission (Staff) filed its response to KCPL's motion. On November 8, 1999, KCPL filed its reply to GST's response.

The parties have engaged in vigorous and disputatious discovery in this matter, requiring Commission orders on July 29, August 19, September 21, October 19, November 2, and November 4, 1999. Now, KCPL seeks to limit the issues, and, thus, the scope of discovery herein. For the reasons explained below, KCPL's motion must be denied.

Discussion:

KCPL seeks to limit discovery as to the ongoing investigation of the explosion at its Hawthorn Generating Station. KCPL contends that permitting the discovery in question will interfere with and delay the investigation of the Hawthorn explosion, cause KCPL's insurer, and its agents and contractors, to withhold information from KCPL, and possibly jeopardize any eventual monetary recovery by KCPL and its insurer from third parties liable for the explosion. GST, in turn, argues that the cause of the Hawthorn explosion is directly relevant to the issues before the Commission in this case and that, in fact, the Commission has already so ruled on more than one occasion. GST points out that the protective order already in place herein will preserve the confidentiality of the material in question. Finally, GST asserts that KCPL's arguments that permitting this discovery might jeopardize recovery by KCPL and its

insuror against third parties simply does not constitute a valid bar to discovery.

On October 28, 1999, the Staff of the Missouri Public Service Commission (Staff) also filed a response to KCPL's motion. Staff, like GST, points out that the Commission has already held that the Hawthorn incident is in some respects relevant to this proceeding. Staff also points to the protective order already in place in this matter as a safeguard against the improper revelation of confidential information herein. Staff recommends that KCPL's motion be denied.

In its reply to GST's response, filed on November 8, 1999, KCPL reiterates the arguments set out in its motion. KCPL also makes an alternative motion, that GST's complaint be held in abeyance pending completion of the Hawthorn investigation, Case No. ES-99-581. Finally, KCPL states that it may well seek a writ of prohibition should the Commission not grant its motion to narrow the scope of discovery.

First of all, KCPL's motion to hold GST's complaint in abeyance is not ripe for determination because GST has not yet had an opportunity to respond to it. Pursuant to Commission Rule 4 CSR 240-2.080(12), GST has ten days within which to respond. The Commission will rule on KCPL's abeyance motion after all parties have had an opportunity to be heard.

In its Order issued on August 19, 1999, the Commission stated the scope of this action as follows:

GST's complaint addresses both the adequacy and reliability of the electric service provided by KCPL and whether or not KCPL's charges to GST for that service are just and reasonable. The Commission is authorized, at Section 393.130.1, RSMo 1994, to consider such

matters and GST is authorized to make complaint. Section 386.390.1, RSMo 1994. Pursuant to the Commission's order of June 1, 1999, the Hawthorn explosion and outage is involved herein only to the extent that it is part of these two issues. Likewise, this matter does not involve issues of power generation and distribution except insofar as they directly impact the two issues of the adequacy of KCPL's service to GST and the pricing of KCPL's service to GST.

The discovery that KCPL seeks to avoid is, so far as the pleadings reveal, relevant to the issues as stated on August 19, 1999. Thus, the discovery must be allowed unless KCPL has shown good cause to limit the issues herein.

KCPL has not shown good cause. KCPL contends that the cause of the Hawthorn explosion is irrelevant to GST's action against KCPL. But, GST's theory is that imprudent management, manifested as poor maintenance practices, has resulted in KCPL outages. Whether or not the Hawthorn explosion resulted from poor maintenance is therefore necessarily within the scope of the present proceeding.

KCPL also argues that GST's proposed discovery will somehow "jeopardize" valuable subrogation rights and potential causes of action owned by KCPL and its insurer. Even if this assertion is true, the rights and claims of KCPL and its insurer are no more valuable, and no more deserving of protection, than the rights which GST seeks to vindicate in this action. However, the Commission will specifically subject the proposed discovery to the terms of the protective order already in place herein. Pursuant to Rule 56.01(c), Mo. R. Civ. P., made applicable to Commission proceedings by Section 536.073, RSMo

Cum. Supp. 1998, and Commission Rule 4 CSR 240-2.090, KCPL may seek additional protection for this information.

Next, KCPL argues that the proposed discovery will have an "adverse impact" on the Commission's own investigation of the Hawthorn explosion in Case No. ES-99-581. The Commission is confident that KCPL will promptly cooperate in every respect with the Commission's investigation. An adequate statutory framework exists by which cooperation may be compelled, if necessary.

KCPL also refers to various privileges. Of course, privileged material is protected from discovery. With respect to any such privileged material, KCPL must provide details to GST as explained in the Commission's Order of August 19, 1999: "For each document that KCPL concludes is in fact privileged, KCPL will provide to GST the document's date, title, author, recipients, a general description of its contents, and a specific citation of the particular privilege claimed." Such a "privilege log" is necessary because the discovering party may choose to challenge a claim of privilege by filing an appropriate motion. See generally, Board of Registration for the Healing Arts v. Spinden, 798 S.W.2d 472, 475-479 (Mo. App., W.D. 1990).

KCPL also refers to a purported "insured/insurer" privilege. GST and Staff contend that the asserted privilege either does not exist or does not apply. The Commission will not determine this question as it is not properly before it on KCPL's motion to limit the issues and scope of discovery. The same applies to GST's contention that KCPL's objections to its Data Requests (DRs) 7.2 and 7.3 were untimely. Should

GST seek to compel responses to these DRs, these questions will be ripe for determination.

Finally, GST asserts in its response that KCPL has not complied with the prior orders of the Commission in this matter. In general, GST would be required to embody these allegations in an appropriate motion of its own, not in a response to KCPL's motion. However, in its reply filed on November 8, 1999, KCPL appears to admit the matter: "While KCPL has provided a partial listing of these documents, KCPL intends to provide GST with a complete privilege log by November 9, 1999."

Certainly, GST must be sensitive to the nature of the task that it has itself imposed on its adversary through its discovery requests. KCPL, too, should request an extension from the Commission, if necessary, when it is unable to meet a deadline imposed by an order of the Commission. By the Commission's Order of August 19, 1999, the privilege log was due on or before September 10, 1999. The Commission will extend that date to November 24, 1999.

IT IS THEREFORE ORDERED:

1. That the motion of Kansas City Power & Light Company to limit the scope of discovery and issues in this proceeding, filed on October 18, 1999, is denied.

2. That the protective order previously adopted herein shall apply to all documents and information concerning the cause of the boiler explosion at the Hawthorn Generating Station which GST Steel Company obtains through discovery in this proceeding.

3. That the privilege log previously required to be served by Kansas City Power & Light Company upon GST Steel Company on or before September 10, 1999, shall be served on or before November 24, 1999. Any request for an extension of that date must be filed with the Commission on or before November 24, 1999.

4. That this order shall become effective on November 24, 1999.

BY THE COMMISSION



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Kevin A. Thompson, Deputy Chief
Regulatory Law Judge, by delegation
of authority pursuant to 4 CSR
240-2.120(1), (November 30, 1995)
and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 16th day of November, 1999.

Atty/Sec'y:

Thompson / Pope

Date Circulated

11-9

Return by 11-15

10 a.m.

CASE NO. EC-99-553

[Signature]
Lumpe, Chair

[Signature]
Crumpton, Commissioner

[Signature]
Murray, Commissioner

[Signature]
Schemenauer, Commissioner

[Signature]
Drainer, Vice-Chair

[Signature]

STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson
City, Missouri, this 16th day of November 1999.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

